

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF PUERTO RICO

3                   LUZ E. FELICIANO,

4                   Plaintiff,

5                   v.

6                   COMMONWEALTH OF PUERTO RICO,  
7                   et al.,

8                   Defendants.

9  
10  
11                   CIVIL NO. 04-1744 (RLA)

**ORDER DISMISSING THE COMPLAINT**

12                  Co-defendant, the Puerto Rico Secretary of Justice, has moved  
13 the court to dismiss the instant complaint pursuant to Rule 12(c) of  
14 the Fed. R. Civ. P. The court having reviewed the arguments presented  
15 by the parties hereby disposes of defendant's request as follows.

16                  **RULE 12(c)**

17                  Rule 12(c) provides that "[a]fter the pleadings are closed but  
18 within such time as not to delay trial, any party may move for  
19 judgment on the pleadings." The standard for ruling on a motion filed  
20 under Rule 12(c) is essentially the same as that for deciding on a  
21 motion to dismiss filed under Rule 12(b) (6). "[T]he trial court must  
22 accept all of the nonmovant's well-pleaded factual averments as true,  
23 and draw all reasonable inferences in his favor... The motion should  
24 not be granted unless it appears beyond doubt that the plaintiff can  
25 prove no set of facts in support of his claim which would entitle him  
26 to relief." McCord v. Horace Mann Ins. Co., 390 F.3d 138, 141 (1<sup>st</sup>

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3 Cir. 2004) (citations omitted). "Because such a motion calls for an  
 4 assessment of the merits of the case at an embryonic stage, the court  
 5 must view the facts contained in the pleadings in the light most  
 6 favorable to the nonmovant and draw all reasonable inferences  
 7 therefrom to the nonmovant's behoof (sic)." R.G. Fin. Corp. v.  
Vergara-Nuñez, 446 F.3d 178, 182 (1<sup>st</sup> Cir. 2006). "There is no  
 8 resolution of contested facts in connection with a Rule 12(c) motion:  
 9 a court may enter judgment on the pleadings only if the properly  
 10 considered facts conclusively establish the movant's point." *Id.* See  
 11 also, Aponte-Torres v. Univ. of Puerto Rico, 445 F.3d 50, 54 (1<sup>st</sup> Cir.  
 12 2006).

13                   **THE AMENDED COMPLAINT**

14                   The appearing defendants in the caption of the Amended Complaint  
 15 filed in this case (docket No. 3) are: (1) THE COMMONWEALTH OF PUERTO  
 16 RICO,<sup>1</sup> (2) THE PUERTO RICO DEPARTMENT OF JUSTICE through its  
 17 Secretary<sup>2</sup> and (3) THE PUERTO RICO DEPARTMENT OF EDUCATION "Education  
 18 Department". Additionally, at ¶ 5 of the pleading plaintiff also  
 19 alleges that EDGARDO RODRIGUEZ, her supervisor, "is being sued in his  
 20 official and personal capacity."

21                   Plaintiff asserts claims under the Civil Rights Act of 1964 as  
 22 well as the American with Disabilities Act ("ADA"). Supplemental

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24                   <sup>1</sup> Named "as the entity responsible for all the acts of any of  
 25 its agencies". ¶ 2.

26                   <sup>2</sup> This party is included because it "is the agency responsible  
 27 for the representation of any of the state departments". ¶ 3.

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2 claims are pled under Law No. 100 of June 30, 1959, 29 P.R. Laws Ann.  
3 § 146 (2002) and under Puerto Rico's tort provisions as established  
4 in art. 1802 of the Puerto Rico Civil Code, 31 P.R. Laws Ann. § 5141  
5 (2002).

6 The complaint seeks compensatory and punitive damages. No  
7 equitable relief is demanded.

8 According to the amended pleading, plaintiff started working for  
9 the Education Department as an English teacher in 1995. In 2002  
10 plaintiff was relocated to a public school in the town of  
11 Barranquitas where she was assigned to a classroom full of books with  
12 "rat filth" which affected her health. On July 2, 2002 plaintiff  
13 requested and was granted accommodation by the Education Department  
14 due to her asthma, "trombositopenia" condition and circulatory  
15 problems. However, MR. RODRIGUEZ, plaintiff's supervisor, refused to  
16 accommodate her. The reasonable accommodation issue was discussed  
17 with her supervisor on November 7, 2002 to no avail. Plaintiff  
18 further alleged that she worked in a classroom full of books with  
19 "rat filth" for almost a year which deteriorated plaintiff's health.

20 On April 28, 2003, after having been hospitalized due to her  
21 serious health condition, plaintiff submitted another request for a  
22 reasonable accommodation. On May 5, 2003 the Education Department  
23 questioned MR. RODRIGUEZ regarding the failure to accommodate  
24 plaintiff but no action was taken.

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2           In May 2003, plaintiff referred the matter to OSHA because her  
3 health continued to deteriorate. OSHA directed MR. RODRIGUEZ to  
4 immediately remove the boxes with books containing rat filth from her  
5 classroom. However, the books remained there until the end of the  
6 semester.

7           By then, plaintiff's health had deteriorated to a degree that  
8 she had to seek treatment with the STATE INSURANCE FUND.  
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#### ELEVENTH AMENDMENT

10           The Eleventh Amendment to the United States Constitution bars  
11 the commencement and prosecution in federal court of suits claiming  
12 damages brought against any state, including Puerto Rico, without its  
13 consent. Toledo v. Sanchez, \_\_\_\_ F.3d \_\_\_, No. 05-1376, 2006 WL  
14 1846326 (1<sup>st</sup> Cir. July 6, 2006); Fresenius Med. Care Cardiovascular  
15 Res., Inc. v. Puerto Rico and Caribbean Cardiovascular Ctr. Corp.,  
16 322 F.3d 56, 61 (1<sup>st</sup> Cir. 2003); Futura Dev. v. Estado Libre Asociado,  
17 144 F.3d 7, 12-13 (1<sup>st</sup> Cir. 1998); In re San Juan Dupont Plaza Hotel  
18 Fire Lit., 888 F.2d 940, 942 (1<sup>st</sup> Cir. 1989); Ramirez v. P.R. Fire  
19 Serv., 715 F.2d 694, 697 (1<sup>st</sup> Cir. 1983).

20           Eleventh Amendment immunity applies even though the state has  
21 not been named in the suit. Its protection is extended to  
22 governmental entities which are deemed an arm or alter ego of the  
23 state. Royal Caribbean Corp. v. Puerto Rico Ports Auth., 973 F.2d 8,  
24 9-10 (1<sup>st</sup> Cir. 1992); In re San Juan Dupont Plaza Hotel Fire Lit., 888  
25 2d at 943-44. In this regard the Education Department has been found  
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2 entitled to Eleventh Amendment immunity. Fernández v. Chardón, 681  
3 F.2d 42, 59 n.13 (1<sup>st</sup> Cir. 1982).

4 Additionally, actions for damages filed against government  
5 officials in their official capacity are deemed actions against the  
6 state since the real party in interest is the government and not the  
7 official. Pennhurst St. Sch. & Hosp. v. Halderman, 465 U.S. 89, 101-  
8 102, 104 S.Ct. 900, 908-909, 79 L.Ed.2d 67, 79 (1984). Hence,  
9 Eleventh Amendment immunity applies in these cases even though the  
10 state has not been named in the suit. Hafer v. Melo, 502 U.S. 21,  
11 112 S.Ct. 358, 116 L.Ed.2d 301 (1991). Suits against officers in  
12 their official capacity seeking monetary relief are tantamount to  
13 actions directly against the state. Will v. Mich. Dep't of St.  
14 Police, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Thus, no  
15 claims for damages may be asserted against a state agency or a state  
16 official acting in his official capacity in federal court under the  
17 Eleventh Amendment immunity. See, i.e., Destek Gp., Inc. v. St. of  
18 New Hampshire Pub. Utilities Com'n, 318 F.3d 32, 40 (1<sup>st</sup> Cir. 2003);  
19 Wang v. New Hampshire Bd. of Registration in Med., 55 F.3d 698, 700-  
20 701 (1<sup>st</sup> Cir. 1995).

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## 3 CLAIMS

## 4 Civil Rights Act

5 Plaintiff alleges that defendants' conduct constitutes  
6 discrimination under Titles IV,<sup>3</sup> VI<sup>4</sup> and VII<sup>5</sup> of the Civil Rights Act  
7 of 1964. However, none of these provisions is applicable to the facts  
8 alleged in this case inasmuch as they all relate exclusively to  
9 discrimination based on "race, color, religion, sex or national  
10 origin". Title IV<sup>6</sup> addresses desegregation in public schools; Title  
11 VI<sup>7</sup> prohibits discrimination in federally assisted programs and Title  
12 VII<sup>8</sup> proscribes discrimination in employment.

13 There is no allegation in the complaint of the type of  
14 discrimination addressed by the Civil Rights Act.

## 15 ADA - Failure to Accommodate

16 ADA "forbids discrimination against persons with disabilities in  
17 three major areas of public life: employment, which is covered by  
18 Title I of the statute; public services programs, and activities,  
19 which are the subject of Title II; and public accommodations, which

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20       <sup>3</sup> Amended Complaint ¶¶ 18 and 20.

21       <sup>4</sup> Amended Complaint ¶ (A) p.5.

22       <sup>5</sup> Amended Complaint I Jurisdiction and Venue - reference to 42  
23 U.S.C. § 2000e.

24       <sup>6</sup> See, 42 U.S.C. § 2000c.

25       <sup>7</sup> See, 42 U.S.C. sec.. 2000d.

26       <sup>8</sup> See, 42 U.S.C. §§ 2000e-2 and 2000e-3.

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3 are covered by Title III." Bd. of Trustees of Univ. of Ala. v.  
 4 Garrett, 531 U.S. 356, 372, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001).

5 It is evident from a reading of plaintiff's complaint that her  
 6 claim under ADA is based exclusively on defendants' alleged failure  
 7 to grant her a reasonable accommodation in her work under Title I.<sup>9</sup>  
 8 However, under Garrett, states have been found to be immune from  
 9 Title I ADA suits in federal court based on the protection afforded  
 10 by the Eleventh Amendment.<sup>10</sup>

11 **ADA - Retaliation**

12 Plaintiff attempts to circumvent defendant's Eleventh Amendment  
 13 immunity defense by claiming to have asserted a cause of action under

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15 <sup>9</sup> The First Circuit Court of Appeals has listed the following  
 16 requirements for a failure to accommodate claim: (a) the plaintiff  
 17 must furnish sufficient admissible evidence that he/she is a  
 18 qualified individual with a disability within the meaning of the ADA;  
 19 (b) that he/she worked for an employer covered by the ADA; (c) that  
 20 the employer, despite its knowledge of the employee's physical  
 21 limitations, did not accommodate those limitations; (d) that the  
 22 employer's failure to accommodate the known physical limitations  
 23 affected the terms, conditions, or privileges of the plaintiff's  
 24 employment. See, Higgins v. New Balance Athletic Shoe, Inc., 194 F.3d  
 25 252, 264 (1<sup>st</sup> Cir. 1999).

26 <sup>10</sup> This immunity has not been extended to certain Title II ADA  
 27 actions. See, i.e., Tennessee v. Lane, 541 U.S. 509, 124 S.Ct. 1978,  
 28 158 L.Ed.2d 820 (2004) (case involving access to courts brought by  
 29 individuals protected by the statute); Toledo v. Sanchez, \_\_\_ F.3d \_\_\_  
 30 2006 WL 1846326 (student purportedly denied accommodation at public  
 31 education facility). Although addressed at a lower level, the  
 32 Eleventh Amendment's applicability to Title III suits is yet to be  
 33 resolved by the United States Supreme Court. See, i.e., Simmang v.  
Texas Bd. of Law Examiners, 346 F.Supp.2d 874 (W.D.Tex. 2004) (Title  
 34 III suits barred by the Eleventh Amendment).

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3 ADA's retaliation provision.<sup>11</sup> "[A retaliation] claim is usually made  
4 by one who requests an accommodation or complains about a refusal to  
5 accommodate and is then punished for the request or the complaint.  
6 Guzman-Rosario v. United Parcel Service, Inc., 397 F.3d 6, 11 (1<sup>st</sup>  
7 Cir. 2005).

8 The analysis established under McDonnell Douglas Corp. v. Green,  
9 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973) utilized for  
10 retaliation claims in Title VII actions has been applied to ADA  
11 suits. Champagne v. Servistar Corp., 138 F.3d 7, 12 (1<sup>st</sup> Cir. 1998).  
12 Thus, in this particular case, absent direct evidence of  
13 discriminatory *animus*, plaintiff must initially establish a *prima  
facie* case of retaliation by showing that: (1) she engaged in ADA  
14 protected conduct; (2) suffered an adverse employment action; and (3)  
15 a causal connection exists between these two events. Texas Dep't of  
16 Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67  
17 L.Ed.2d 207 (1981); Noviello v. City of Boston, 398 F.3d 76, 88 (1<sup>st</sup>  
18 Cir. 2005); Che v. Mass. Bay Transp. Auth., 342 F.3d 31, 38 (1<sup>st</sup> Cir.  
19 2003); Dressler v. Daniel, 315 F.3d at 78; Gu v. Boston Police Dep't,

21 \_\_\_\_\_  
22 <sup>11</sup> 42 U.S.C. § 2203(a) provides:

23 It shall be unlawful to coerce, intimidate,  
24 threaten, or interfere with any individual in  
25 the exercise or enjoyment of, or on account of  
26 his or having exercised or enjoyed, or on  
account of his or her having aided or encouraged  
any other individual in the exercise or  
enjoyment of, any right granted or protected by  
this chapter.

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312 F.3d 6, 14 (1<sup>st</sup> Cir. 2002); Marrero v. Goya of P.R., 304 F.3d 7,  
22 (1<sup>st</sup> Cir. 2002); Hernandez-Torres v. Intercontinental Trading,  
Inc., 158 F.3d 43 (1<sup>st</sup> Cir. 1998); Hodgens v. Gen. Dynamics Corp., 144  
F.3d 151, 161 (1<sup>st</sup> Cir. 1998); Champagne, 138 F.3d at 12 n.5; Fennell  
v. First Step Designs, Ltd., 83 F.3d 526, 535 (1<sup>st</sup> Cir. 1996);  
Hoeppner v. Crotched Mountain Rehab. Ctr., 31 F.3d 9, 14 (1<sup>st</sup> Cir.  
1994). "Once the plaintiff has made a prima facie showing of  
retaliation, the *McDonnell Douglas* burden-shifting approach is  
employed, and defendant must articulate a legitimate, non-retaliatory  
reason for its employment decision. If the defendant meets this  
burden, the plaintiff must now show that the proffered legitimate  
reason is in fact a pretext and that the job action was the result of  
the defendant's retaliatory animus." Calero-Cerezo v. U.S. Dept. of  
Justice, 355 F.3d 6, 26 (1<sup>st</sup> Cir. 2004); Wright v. CompUSA, Inc., 352  
F.3d 472, 478 (1<sup>st</sup> Cir. 2003); Che, 342 F.3d at 39.

An examination of the allegations in the complaint - which we  
must note are extremely vague - leads us to the inescapable  
conclusion that no retaliation claim was pled. The facts asserted in  
the pleading merely indicate that plaintiff requested and was granted  
an accommodation; that her supervisor did not implement it and that  
she continued working under the same conditions until her health  
deteriorated to the point where she had to seek treatment at the  
STATE INSURANCE FUND. There is no allegation that plaintiff was  
somehow punished for having requested the accommodation.

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## 3 BREACH OF STATE LAW

4 Additionally, in the Amended Complaint, plaintiff claims  
5 defendants breached local laws. However, the Eleventh Amendment also  
6 precludes suits premised on alleged violations of state legal  
7 provisions.<sup>12</sup>

8 A federal court's grant of relief against state officials  
9 on the basis of state law, whether prospective or  
10 retroactive, does not vindicate the supreme authority of  
11 federal law. On the contrary, it is difficult to think of  
12 a greater intrusion on state sovereignty than when a  
13 federal court instructs state officials on how to conform  
14 their conduct to state law. Such a result conflicts  
15 directly with the principles of federalism that underlie  
16 the Eleventh Amendment.

17 Pennhurst, 465 U.S. at 106, 104 S.Ct. at, 911, 79 L.Ed.2d at 82  
18 (1984).

## 19 CONCLUSION

20 Based on the foregoing, we find that the complaint was  
21 insufficient to state claim for violation of either the Civil Rights  
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24       <sup>12</sup> The court having dismissed the federal-based causes of  
25 action, plaintiffs' remaining pendent state law claims would have  
26 also been dismissed regardless of Eleventh Amendment immunity  
concerns. See, McBee v. Delica Co., Ltd., 417 F.3d 107 (1<sup>st</sup> Cir.  
2005); Gonzalez v. Family Dept., 377 F.3d 81, 89 (1<sup>st</sup> Cir 2004).

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2 Act or the ADA. Further, the Eleventh Amendment shields defendants  
3 from the state-based claims in this forum.

4 Accordingly, the Motion for Judgment on the Pleadings (docket  
5 No. 22) is **GRANTED**<sup>13</sup> and Amended Complaint filed in this case is  
6 hereby **DISMISSED**.

7 Judgment shall be entered accordingly.

8 IT IS SO ORDERED.

9 San Juan, Puerto Rico, this 10<sup>th</sup> day of August, 2006.

11 \_\_\_\_\_  
12 S/Raymond L. Acosta  
RAYMOND L. ACOSTA  
13 United States District Judge

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26 <sup>13</sup> See also, Opposition (docket No. 24); Reply (docket No. 26)  
and Sur Reply (docket No. 33).